



MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

REQUEST FOR PROPOSALS (RFP)

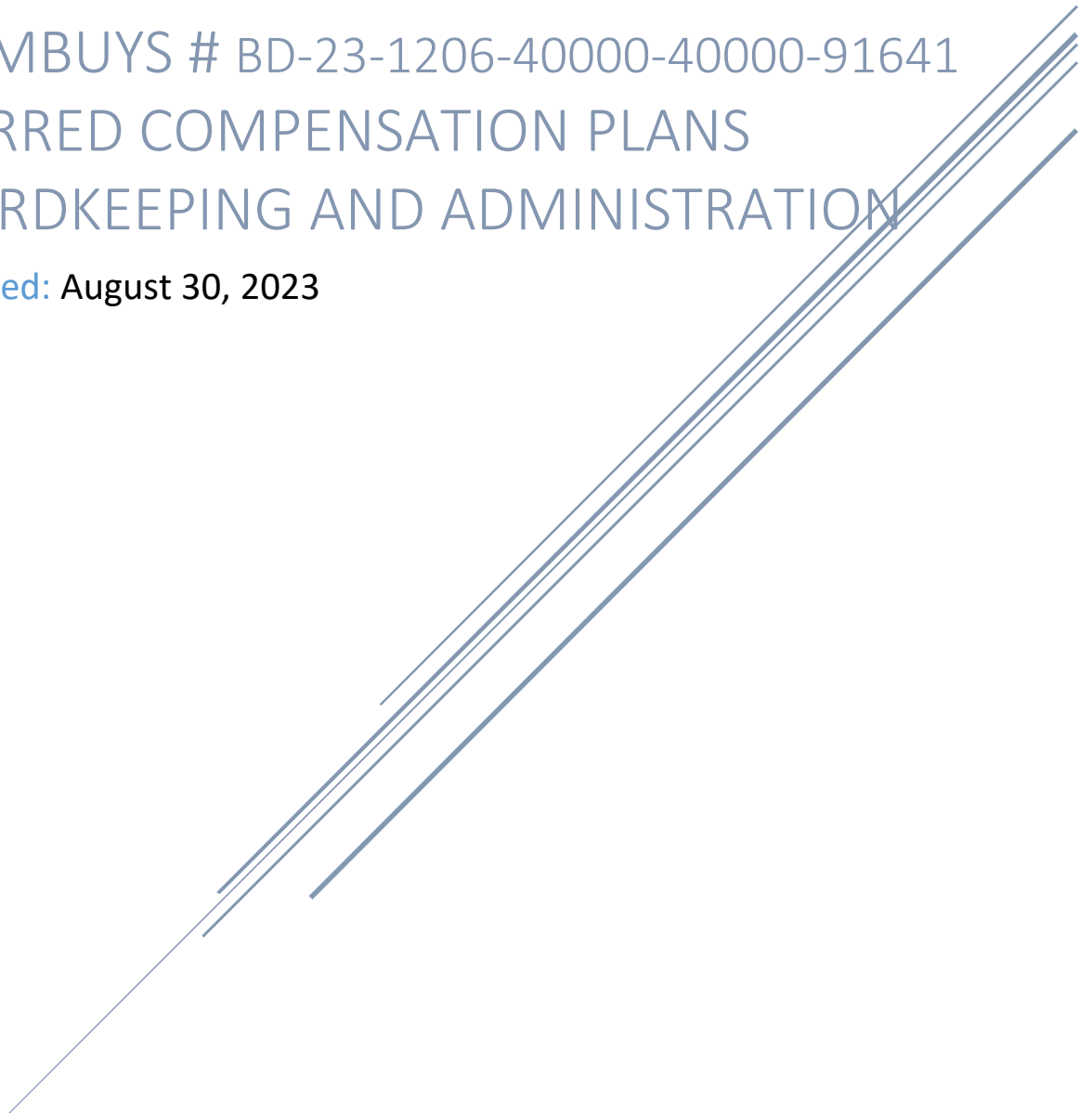
RFP#: 154-23

COMMBUYS # BD-23-1206-40000-40000-91641

DEFERRED COMPENSATION PLANS

RECORDKEEPING AND ADMINISTRATION

Date Issued: August 30, 2023





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Attn: Bidder/s

Request for Proposals (RFP) # 154-23

RFP Description: Deferred Compensation Plans Recordkeeping and Administrative Services

Dear Madam/Sir,

The Massachusetts Bay Transportation Authority (“MBTA” or “Authority”), a corporate and a political subdivision of the Commonwealth of Massachusetts, existing pursuant to Mass. Gen. Laws, ch 161A (as amended) invites Bidders to participate in the competitive bid 154-23. The Scope of Work is outlined below in Section 2. The MBTA may at its own discretion award contract(s) to one or multiple Bidders. All formal communication with the MBTA during the bidding period shall be only through the MBTA’s designated point of contact.

The MBTA’s designated point of contact for this solicitation will be:

Rob Weiner

Massachusetts Bay Transportation Authority

10 Park Plaza, Room 2810

Boston, MA 02116

Email: rweiner@mbta.com

The RFP shall be launched through COMMBUYS, and proposals must be submitted electronically no later than 10/4/2023 2:00 PM, in full compliance with this RFP including but not limited to Section 3, Bidders Instructions and Procurement Process. This RFP shall remain in force until the execution of the Contract, or until modified or cancelled by the MBTA.

Respectfully,

Rob Weiner

Massachusetts Bay Transportation Authority

RFP # **154-23**

COMMBUYS Bid # BD-23-1206-40000-40000-91641



1. INTRODUCTION

The Massachusetts Bay Transportation Authority (“MBTA” or “Authority”) seeks a Contractor to provide recordkeeping and administrative services for the MBTA’s Deferred Compensation Savings Plan 401(a), Deferred Compensation Plan, Annuity Contracts, and Excess Benefits Annuity Plan.

The Contract will have a five (5) year Term with two (2), two (2) year Option Terms at MBTA’s discretion. The Contractor will work with the Deferred Compensation Plans Committee (the “Committee”), which has been tasked with ongoing management of all plans. The Contractor will provide the Committee and plan participant with recordkeeping and administrative services. The Contractor will provide the Committee with reporting necessary to monitor plan administration and provide plan participants with education, enrollment, transaction, web, and call center services.

A successful Contractor will have: (a) familiarity with the public sector and Defined Contribution plans, Defined Benefit plans, and Annuity plans of a comparable size, (b) compelling in-person and virtual communications/education for plan participants both as part of the conversion process and ongoing, (c) outsourcing and pragmatic automation of plan related administrative tasks, and (d) a knowledge, responsive, and experienced service team with a willingness to form a partnership with the Committee and provide training for administrative team members.

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	Deferred Compensation Savings Plan 401(a) (Defined Contribution Plan)	Deferred Compensation Plan (Defined Benefit Plan)	Annuity Contracts (Frozen)	Excess Benefits Annuity Plan (Frozen)
Number of Plan Participants	- 491 active members with balance - 158 terminated members with balance	952 members in pay status	542 outstanding contracts (retirees)	7
Funding Source/Annual Payments	- Funded by employee and MBTA contributions - \$65,745,792 million fund balance as of 8/10/2023 - \$2,610,898 distributions 7/1/2022 to 6/30/2023	- Funded by the MBTA - PAYGO - \$2.85 million paid in FY22	- Funded by the MBTA - PAYGO - \$3.4 million paid in FY22	- Funded by the MBTA - PAYGO - \$51K paid annually
Benefits	Employee entitled to the value of the fund upon retirement or vested amount upon termination of employment	3.36% of highest three years compensation * number of years of service offset by primary retirement payments for only those executives in Main Fund	1% of average of 3 highest years * years of service	N/A
Vesting	Essentially, fully vested at five years of service	Vested upon retirement	Vesting of minimum payments at 10 years of service	Vesting of minimum payments at 10 years of service
Current Trustee, Administrator, Actuary	- ADP administers the Plan - Reliance Trust holds funds for the Plan	- No Trust - Benesys administers the Plan - Comerica is the paying agent - Buck is the actuary for the Plan	- Benesys administers the Plan - Comerica is the paying agent - Buck is the actuary for the annuity contracts	- Benesys administers the Plan - Comerica is the paying agent



2. SCOPE OF WORK

2.1 Plan Document Services

Contractor shall support administration of the plan in accordance with custom plan documents created and supported by the MBTA's outside ERISA counsel.

2.2 Conversion Services

Contractor shall have a Service Team assigned to the MBTA account, including a Conversion Project Manager to lead the process for moving the plans from the old Contractors to the new. The Service Team will also include a Relationship Manager as the main point of contact at the Contractor for the MBTA account.

- 2.2.1** Contractor shall assign a Conversion Project Manager to work with the MBTA so that the installation is completed in a timely and efficient manner.
- 2.2.2** The Conversion Project Manager shall prepare and communicate a Transition Timeline to the MBTA.
- 2.2.3** The Transition Timeline shall identify the tasks and responsibilities for each major step of the installation process.
- 2.2.4** Contractor shall assign a Payroll Specialist to establish the plans onto the Contractor's recordkeeping system and determine the payroll file is in the proper format and includes required data.
- 2.2.5** The Conversion Project Manager shall coordinate the transfer of all records and assets from the current recordkeeper/trustee and complete a detailed reconciliation.
- 2.2.6** Contractor shall continue to process, without interruptions, Participant loan repayments, elective deferrals, and MBTA contributions during the Conversion Period.

2.3 Enrollment Services

Contractor shall provide either paper or electronic enrollment kits to the MBTA in bulk for distribution by the MBTA. The kits shall include enrollment forms, beneficiary election forms and fund allocation forms as well as Summary Plan Description (SPD), account access, vesting, loan, hardship, and withdrawal information.

- 2.3.1** Contractor shall maintain all beneficiary forms while the MBTA agrees to maintain copies of all beneficiary forms.
- 2.3.2** Contractor shall provide the Voice Response System and Participant Internet access seven (7) days/ week and twenty-four (24) hours a day through which Participants may enroll in the Plan and make a salary deferral election and investment selections.
- 2.3.3** Contractor shall confirm a Participant's salary deferral information to the MBTA to notify the payroll provider to start payroll deductions.
- 2.3.4** Contractor shall send the Participant's salary deferral information to the MBTA to notify the payroll provider to start payroll deductions.



- 2.3.5** Contractor shall ensure that Participants who are enrolled in the Plan as of the beginning of the Reconciliation Period shall either have their deferral percentages “mapped” from prior Plan records and investment selections for such contributions mapped from prior investment elections, or all Participants will be required to complete an enrollment form with respect to deferral percentages and the investment of such amounts.
- 2.3.6** Participants who become eligible to participate in the Plan during the Reconciliation Period shall enroll in the Plan through the completion of an enrollment form provided by the Contractor.
- 2.3.7** Following the Reconciliation Period, the Contractor shall provide employee education meetings to provide information on plan benefits, administration, and retirement planning tools available.
- 2.3.8** The MBTA welcomes suggestions regarding resources and communication, as well as appropriate methods of connecting with the eligible population.

2.4 Contributions and Loan Repayments

Contractor shall provide either paper or electronic enrollment kits to the MBTA in bulk for distribution by the MBTA. The kits shall include enrollment forms, beneficiary election forms and fund allocation forms as well as Summary Plan Description (SPD), account access, vesting, loan, hardship, and withdrawal information.

- 2.4.1** Contractor shall process rollover contribution requests based solely on the Participants’ self-certified completion of an MBTA approved rollover contribution form.
- 2.4.2** Contractor shall process Participant loan repayments, Participant elective deferrals and after-tax contributions, MBTA matching contributions and other types of MBTA contributions.

2.5 Plan Administrative and Recordkeeping Services

Contractor shall securely maintain census information submitted by the MBTA for eligible employees, as well as transactional financial and account information.

2.6 Telephone/Internet/Participant Call Center Access

- 2.6.1** Contractor shall provide participants with access through the Voice Response System (VRS) to participant call center representatives to answer inquiries regarding general information about certain provisions of the plan.
- 2.6.2** Contractor shall provide Participants with access through the Voice Response System and Participant Internet for investment allocations and transfers, account balance information, deferral changes, distribution requests, loan requests, and account information for inquiry and transactions.
- 2.6.3** Contractor shall provide an MBTA representative authorized by the MBTA with access through the Plan Sponsor Internet as well as various management reports pertaining to the administration of the Plan.
 - 2.6.3.1** Security



- (a) The Contractor shall take appropriate steps to secure Participant information and assets including but not limited to: adherence to standards such as NIST, ISO, SPARK, etc.; third-party audits such as SOC2; network monitoring; penetration testing; cybersecurity training for employees; procedures to prevent call center fraud; dark web monitoring; and participant account protection program.

2.6.3.2 Contractor Customer Service Representatives

- (a) Contractor shall give Participants access to Customer Service Representatives for the purpose of receiving information about the Plan and their accounts as well as initiating certain transactions.
- (b) Participants will be able to contact Customer Service Representatives through the VRS.
- (c) Customer Service Representatives generally will be accessible to authorized Participants between the hours of 8:00 a.m. and 9:00 p.m., Eastern Time.

2.7 Loans

- 2.7.1** Contractor shall make available the Voice Response System and participant internet for participants to model and request loans and shall process and disburse the requested loans.
- 2.7.2** Contractor shall automatically default all loans of all participants coded by the MBTA as “terminated,” in accordance with the plan’s loan policy and the administration manual.

2.8 Distribution Services

- 2.8.1** Contractor shall process Participant requests for distribution that require spousal consent or for which the MBTA has otherwise indicated to the Contractor in writing require its approval.
- 2.8.2** In all other cases, following the Participant’s termination of employment for any reason, the Contractor is directed by the MBTA to accept Participant-initiated distribution requests from the Plan via the Participant Internet, the Voice Response System, or other Contractor approved electronic means.
- 2.8.3** The Contractor shall identify Participants subject to Required Minimum Distribution (“RMD”) payments based on data provided by the MBTA.
- 2.8.4** The Contractor shall process RMD payments in accordance with the procedures approved by the MBTA.

2.9 Tax Withholding and Reporting Services

Contractor shall withhold and remit federal and mandatory state tax withholding upon distributions and withdrawals and shall prepare IRS Forms 1099-R and 945.



2.10 Participant & MBTA Reporting

- 2.10.1** Contractor shall issue quarterly account statements to Participants (to the extent permitted under applicable law, through electronic means).
- 2.10.2** Contractor shall provide Plan level reports to the MBTA.
- 2.10.3** Contractor shall provide, on behalf of the institutional trustee or custodian, as applicable, audit and trust level reports.

2.11 Basic Proxy Services

Proxies for all mutual funds shall be sent to the MBTA for voting.

2.12 MBTA Administrative Training

Contractor shall provide the MBTA training at a location or locations agreed to by the MBTA or through an on-line internet training session, in order to familiarize MBTA with the Contractor's recordkeeping procedures and reports, and to provide MBTA with important operating guidelines.

2.13 Testing Services

To the limited extent required for a governmental plan, the Contractor shall have the ability perform timely and accurate testing and reporting services.

2.14 Notice Distribution Services

Contractor shall prepare and distribute all required participant notices.

2.15 Asset Transfer / Go Live – 90 Day Requirement

This phase shall begin upon the completion of a Letter of Intent signed by the MBTA, to be completed within the prerequisite 90-day window.

2.16 Implementation / Documentation

- 2.16.1** Notify current provider with 60 to 90-days' notice
- 2.16.2** Provide weekly status calls with the MBTA
- 2.16.3** Collaborate with USI Consulting Group to finalize fund line-up and mapping
- 2.16.4** Provide executed documents for existing plans



- 2.16.5** Return Electronic Data Transfer set-up form
- 2.16.6** Complete document review
- 2.16.7** Send draft documents to the MBTA for review
- 2.16.8** Review and finalize Announcement (of plan change) Letter
- 2.16.9** Send Announcement Letter to plan participants
- 2.16.10** Review & finalize Transition Brochure (includes dates for Blackout Period and on-site/virtual education)
- 2.16.11** Email Transition Brochure to plan participants
- 2.16.12** Send final Plan Documents to the MBTA for execution
- 2.16.13** Send plan is live communication to plan participants once Blackout Period ends
- 2.16.14** Send Fee Disclosure notice to MBTA and plan participants

2.17 Asset Transfer

- 2.17.1** Receive test/cutoff file from prior provider
- 2.17.2** Asset Liquidation from current provider
- 2.17.3** Receive assets
- 2.17.4** Receive final valuation from current provider
- 2.17.5** Complete reconciliation, research and resolve any variances
- 2.17.6** Blackout Period ends, plan is live

2.18 Education & Communication

- 2.18.1** Plan and Benefit Education for MBTA participants: Frequent communication and additional resources must be provided to eligible participants to increase awareness and understanding of their benefits.
- 2.18.2** The MBTA welcomes suggestions regarding resources and communication, as well as appropriate methods of connecting with eligible employees.

2.19 Estimated Contract Duration

Estimated contract duration is a five (5) year Term with two (2), two (2) year Option Terms at MBTA's discretion.

3. BIDDERS INSTRUCTIONS AND PROCUREMENT PROCESS

3.1 Bidders' Conference



MBTA will conduct a virtual pre-bid Conference on Thursday, September 7, 2023, at 12:30 PM (EDT). Interested bidders are requested to notify Rob Weiner by email at rweiner@mbta.com of their intention to attend. Bidder company name and full names of all expected participants should be communicated.

Bidders may join the video conference by following the link, or by copying and pasting it in a web browser: link here https://teams.microsoft.com/l/meetup-join/19%3ameeting_OGI3ZTBkYTAtNjk3Yy00MjdLTKxMTItYmJjMjg4ZTIyNmNh%40thread.v2/0?context=%7b%22Tid%22%3a%227558e599-f006-481f-9717-b189e6730862%22%2c%22Oid%22%3a%22a661eeb4-c416-417c-9ad9-602a1ad0449f%22%7d

Meeting ID: 265 962 166 922 Passcode (if requested): cdgM3y
You may also dial in: (929) 352-1865. Meeting Id: 932 098 672#

Bidders please note: Bidders' Conference details are subject to change. Interested Bidders are strongly advised to confirm their intention to attend as noted above.

Each Bidder is encouraged to attend Bidders' conference with appropriate members of its proposed staff, and if requested by the MBTA, senior representatives of proposed team members identified by the MBTA. Nothing stated at any Bidders' conference or included in a written record or summary of a Bidders conference will modify this RFP or any other part of the RFP unless it is incorporated in an addendum issued.

Each Bidder, by submittal of its Response, acknowledges the opportunity to attend the Bidders' conference, and waives any right to challenge this procurement based on its attendance at, or failure to attend, the Bidders' conference. Nothing stated at any Bidders' conference or included in a written record or summary of a Bidders conference will modify this RFP or any other part of the RFP unless it is incorporated in an addendum issued.

3.2 Procurement Method

This RFP is issued pursuant to the following laws and regulations: **Mass. Gen Laws, Ch. 161A; 801 CMR 21.00.**

Bidder shall be responsible for making itself fully aware of, complying with, and in its Response addressing the impact of and compliance with all applicable laws and regulations.

This RFP will be launched and managed via COMMBUYS. Instructions for log-in and use of COMMBUYS are described in <http://www.mass.gov/anf/docs/osd/forms/instructions-for-vendors-responding-to-bids.docx>

Bidders may also contact the COMMBUYS Helpdesk at COMMBUYS@state.ma.us or the COMMBUYS Helpline at 1-888-MA-STATE. The Helpline is staffed from 8:00 a.m. to 5:00 p.m. Monday through Friday (Eastern Time), except on federal, state, and Suffolk County holidays.

It is the responsibility of Bidders to maintain an active registration in COMMBUYS and to keep current the email address of the Bidder's Designated Representative and to monitor that email inbox for communications from the MBTA, including responses to Bidder questions. The MBTA and the Commonwealth assume no responsibility if a Bidder's designated email address is not current, or if technical problems, including those with Bidder's computer, network, or internet service provider ("ISP") cause email communications sent to or from Bidder and the MBTA to be lost or rejected by any means including email or spam filtering.



Bidder shall review and study all documents thoroughly and report any discrepancies, omissions, technical queries, or other clarifications via COMMBUYS.

Questions and clarification requests submitted by Bidder will, together with MBTA's responses, be made available to all Bidders via COMMBUYS.

3.2.1 MBTA DESIGNATED REPRESENTATIVE

Unless specifically stated otherwise in this RFP, Bidder must submit changes to Bidder's designated representative and any other communications in to the MBTA's Point of Contact via COMMBUYS. The MBTA's Point of Contact is Rob Weiner, rweiner@mbta.com.

3.2.2 IDENTIFICATION OF BIDDER DESIGNATED REPRESENTATIVE

When submitting a Bid, the Bidder must identify to the MBTA's Point of Contact its own Designated Representative to act on behalf of the Bidder relating to this procurement.

3.3 RFP Calendar and Delivery Instructions

Bidder is required to prepare and submit all required documents to MBTA electronically via COMMBUYS.

The MBTA anticipates carrying out the procurement process in accordance with the schedule noted in the table below. All times are local Boston, Massachusetts, USA, times unless otherwise indicated. The schedule is subject to modification at the sole discretion of the MBTA. Bidders will be notified of any change by an addendum to this RFP.

TABLE: RFP CALENDAR		
Procurement Activity	Date	Time
RFP issued	8/30/2023	
Pre-bid conference	9/6/2023	2:00 p.m.
Deadline for submission of Bidder questions via COMMBUYS Q&A	9/13/2023	2:00 p.m.
Official Answers for Bid Q&A published by MBTA on COMMBUYS	9/20/2023	2:00 p.m.
Response Due Date	10/4/2023	2:00 p.m.
Virtual presentations at MBTA (estimated)	11/1/2023	
Contract Execution (estimated)	12/6/2023	
Service Start Date (estimated)	3/1/2024	

3.4 Dissemination of Confidential Information

Pursuant to this RFP, MBTA may post a Non-Disclosure Agreement ("NDA") on COMMBUYS for Bidder completion should MBTA require it for issuing what may be considered confidential information for assisting Bidders prepare a Technical Response. Completed confidentiality agreements, if issued, shall be completed, and submitted to rweiner@mbta.com. Should an executed NDA not be required during the procurement process, the Awarded Contractor will be required to execute an NDA with MBTA prior to contract execution.



3.5 Examination of RFP

Each Bidder shall be solely responsible for examining, with appropriate care and diligence, the RFP and any addenda and material made available to Bidders by the MBTA, and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Response, or the performance of the Contractor's obligations under the Contract with the MBTA. Failure of the Bidder to so examine and inform itself shall be at its sole risk, and the MBTA will provide no relief for any error or omission.

The submission of a Response shall be considered prima facie evidence that the Bidder has made the above-described examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Contract.

3.6 Rules of Contact

Starting on the date the RFP is issued and ending on the earliest of (a) the award and execution of the Contract, (b) rejection of all Responses by the MBTA, or (c) cancellation of the procurement, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, email, or formal written communication.

The specific rules of contact are as follows:

- i. No Bidder, or any of its team members, may communicate with another Bidder or its team members with regard to this RFP or either team's Response, except that subcontractors that are shared between two or more Bidder teams may communicate with their respective team members so long as those Bidders establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams. This prohibition does not apply to public discussions regarding the RFP at any MBTA sponsored Bidders' conferences.
- ii. No Bidder or representative thereof shall have any ex parte communications regarding the RFP, the Contract, or the procurement described herein with any member of the MBTA's Board of Directors, the Massachusetts Department of Transportation ("MassDOT") Board of Directors, or with any MassDOT or MBTA staff, advisors, contractors, or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance at the MBTA's Point of Contact's sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP, Contract, or procurement or from participation in public meetings of the MBTA or MassDOT Boards of Directors or any public or Bidder workshop related to this RFP.
- iii. Any communications determined by the MBTA, in its sole discretion, to be improper may result in disqualification.
- iv. Any official information regarding this RFP will be disseminated from the MBTA's Point of Contact via COMMBUYS.
- v. The MBTA will not be responsible for or bound by any oral exchange or any other information or exchange that occurs outside the official process specified herein.
- vi. The MBTA will not be bound by, and Bidders should not rely on, any oral communications regarding the RFP. Use of any information gathered or received from other agencies or entities shall be at the Bidder's own risk.

3.7 Clarifications of Specifications, Questions and Answers

Bidders shall review the RFP and any addenda issued by the MBTA prior to the Response Date, and request written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or



omission contained therein, or of any provision which the Bidder fails to understand or to which the Bidder is suggesting a change. Failure of the Bidder to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by the MBTA. Bidders shall submit, and the MBTA will respond to, questions and requests for written clarification in accordance with this Section 3.7.

Questions and clarification requests shall be minimized or aggregated to the extent possible. All questions and clarification requests shall be made by Bidder through the “Bid Q&A” tab in COMMBUYS. Such comments and questions may be submitted at any time prior to the applicable date specified in Section 3.3 or such later date as may be specified in any addendum and shall: (i) identify the document; (ii) identify the relevant section number and page number) or, if it is a general question, indicate so; and (iii) not identify the Bidder in the body of the question or contain proprietary or confidential information. Questions submitted in any other format or method than that described above will not be considered.

Responses to requests for clarification or questions will be provided in writing and issued by the MBTA’s Point of Contact via the COMMBUYS. In addition, the MBTA reserves the right to, in its sole discretion, not answer all questions submitted by Bidders.

It is the Bidder’s responsibility to verify the MBTA’s receipt of questions and clarification requests.

3.8 RFP Addendum

The MBTA reserves the right to issue addenda to the RFP after initial publication.

It is each Bidder’s responsibility to monitor COMMBUYS for any addenda and any Bid Q&A records related to this RFP. The MBTA and the Commonwealth accept no responsibility and will provide no accommodation to Bidders who submit their Response based on an out-of-date RFP or on information received from a source other than COMMBUYS.

By submission of Response, Bidder acknowledges receipt of all addenda and question and answer responses.

3.9 MBTA Standard Contract and Terms & Conditions

The MBTA does not encourage attempts to negotiate the Section 8.0 Massachusetts Bay Transportation Authority Standard Contract Terms & Conditions. Many of these provisions are required by law; others are longstanding MBTA policy / practice. Accordingly, Bidders / proposers should only redline or object to provisions that they find absolutely unacceptable. Any rejection or modification of these provisions may disqualify a Bid / proposal as being non-responsive or non-compliant.

3.10 Confidentiality / Public Information Act Disclosure Requests

3.10.1 Disclosure Waiver

Each Bidder, by submitting a Response to the MBTA in response to the RFP, consents to the disclosures described in this RFP, including this Section and all other disclosures required by law, and expressly waives any right to contest, impede, prevent, or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing, or delaying such disclosure, under Mass. Gen. Laws, ch. 66 (the Massachusetts Public Records Law or “Public Records Law”) or any other law relating to the confidentiality or disclosure of information. Under no circumstances will the MBTA be responsible or liable to a Bidder or any other party as a result of disclosing any such materials. Each



Bidder hereby further agrees to assist the MBTA in complying with these disclosure requirements.

3.10.2 Public Disclosure of Response Documents

Subject to applicable law, after execution of the Contract, or in the event that the procurement is cancelled by the MBTA, the MBTA shall have the right to publicly disclose any and all portions of all Responses. The MBTA will not disclose material deemed confidential by the MBTA in accordance with Section 3.10.3, unless otherwise required by law.

3.10.3 Disclosure Process for Requests Under the Public Records Law

All written correspondence, exhibits, reports, printed material, photographs, tapes, electronic disks, and other graphic and visual aids submitted to the MBTA during this procurement process, including as part of the response to this RFP, become the property of the MBTA upon their receipt by the MBTA and will not be returned to the submitting parties. Except as provided by applicable law, all materials submitted to the MBTA are subject to release as public records. Bidders shall familiarize themselves with the provisions of applicable law (including the Public Records Law) pertaining to disclosure of information in the MBTA's possession. In no event shall the MBTA, or any of its agents, representatives, consultants, directors, officers, or employees, be liable to a Bidder or Bidder team member for the disclosure of all or a portion of a Response or related information submitted during this procurement.

If a Bidder has special concerns about information which it desires to make available to the MBTA but which it believes constitutes a trade secret, proprietary information, or other information excepted from disclosure, such responding Bidder shall specifically and conspicuously designate that information by placing **"TRADE SECRET - PROPRIETARY"** in the header or footer of each such page affected and by identifying such trade secret, proprietary information in the Technical Proposal Cover Letter (see Enclosure 1). Nothing contained in this provision shall modify or amend requirements and obligations imposed on the MBTA by the Public Records Law or other applicable law. The provisions applicable law, including the Public Records Law, shall control in the event of a conflict between the procedures described above and the applicable law.

If the MBTA receives a request for public disclosure of all or any portion of a Response or its related information that is designated as "Trade Secret - Proprietary," the MBTA will endeavor to use reasonable efforts to notify the applicable Bidder of the request. The Bidder can assert, in writing and at its sole expense, a claimed exception under the Public Records Law or other applicable law, within the time period specified in the notice issued by the MBTA and allowed under the Public Records Law. The Bidder can choose to defend any action seeking release of the records it believes to be confidential information. The Bidder shall indemnify, defend, and hold harmless the MBTA and its agents and employees in connection with the Bidder's opposition to a public records request, and such indemnification shall include all damages, costs and expenses (including reasonable attorney's fees) the MBTA incurs because of or arising out of the Bidder's opposition to any public records request. This indemnification survives the MBTA's cancellation or termination of this procurement or award and subsequent execution of a Contract. In submitting a Response, the Bidder agrees that this indemnification survives as long as any information submitted by the Bidder is in the possession of the MBTA.

The MBTA shall not under any circumstance be responsible for securing a protective order or other relief enjoining the release of information marked "Trade Secret –



Proprietary” in any Response, nor shall the MBTA be in any way financially responsible for any costs associated with securing any such order or for any loss associated with the release of information marked “Trade Secret – Proprietary” or otherwise.

3.11 Business Conduct

All Responses submitted by a Bidder to the MBTA shall be made without collusion with any other Bidder(s) submitting a Response to this RFP.

Bidder shall not directly or indirectly, in relation to this RFP, give, promise, attempt to give, or approve or authorize the giving of anything of value, including by transferring all or part of the remuneration payable under any Contract, to:

- a) any person employed or representing the MBTA;
- b) any other person, including any public official;
- c) a political party or a labor union controlled by any governmental authority or political party; or
- d) a charitable or other organization, or an officer, director, or employee thereof, or any person acting directly or indirectly on behalf of the same

for the purpose of (i) securing any improper advantage for either Bidder or the MBTA; (ii) inducing or influencing a public official improperly to take any action or refrain from taking any action in order for either Bidder or the MBTA to obtain or retain business, or to secure the direction of business to either Bidder or the MBTA, or (iii) inducing or influencing a public official to use his or her influence with any governmental authority or public international organization for any such purpose.

3.12 Collusion

By the submission of a Bid in response to the RFP, the Bidder represents and certifies that its Bid is made without collusion with any other Bidder submitting a Bid on the same commodity / service and is in all respects fair and without fraud.

3.13 Prices

Bidders may submit their pricing using **Form D: Requested RFP Pricing Form**. The attached Excel spreadsheet is intended as an example. Bidders are at liberty to provide their own format. The unit price / rate shall prevail in case of an error in price extension. Prices submitted shall be valid throughout the Acceptance Period. Pricing should be submitted as a separate document and not part of the technical response.

3.14 Acceptance Period

From and after the Response Due Date identified in Section 3.3 (as amended) the MBTA shall have one hundred and eighty (180) calendar days to award a Contract based on this RFP. Such 180-day period is the “Acceptance Period.” The Bidder’s Bid is irrevocable and shall remain open and available for acceptance by the MBTA during the entirety of the Acceptance Period. The MBTA reserves the right to extend the Acceptance Period with respect to any or all Bidders upon obtaining the applicable Bidder’s written consent to such extension.



3.15 Eligible Entities

Any contract resulting from this Bid will be available for use by all MassDOT divisions and departments.

3.16 Pre-Contractual Expenses

The MBTA shall not be liable for any pre-contractual expenses incurred by the Bidder in connection with this RFP. The Bidder shall not include any such expenses as part of its proposal. Pre-contractual expenses include all expenses the Bidder incurs prior to the date the MBTA enters into a Contract with any Bidder (or prior to the MBTA's withdrawal or cancellation of the RFP, as the case may be), such as, but not limited to, expenses the Bidder incurs in preparing its Bid, submitting its Bid to the MBTA, negotiating with the MBTA any matter related to this RFP, and inspection, testing, shipping, and return shipping of proposed goods or samples.

3.17 Tax Exemption

The MBTA is exempt from Federal Excise Tax, including Transportation Tax, and will furnish properly executed tax exemption certificates upon request. The MBTA is also exempt from Massachusetts State Sales Tax — Exemption Number E-042-323-989. Such taxes should not be included in Bid prices.

The Bidder alone shall be responsible for payment of all federal, state and local taxes of all types and kinds applicable to any Agreement it enters into with the MBTA and/or to the compensation it receives from the MBTA or any other party in connection with such Agreement.

3.18 Insurance

The insurance policies that the successful bidder shall carry are outlined in the **attached Minimum Insurance Requirements** document with this solicitation. The successful bidder shall submit proof of insurance for the requirements detailed at the time of submitting their bid. If proof of insurance is not available at the time the Bidder submits its Bid, the successful bidder certifies that it will carry such insurance policies and all costs associated with the insurance requirements are included in its Bid pricing. The successful bidder shall provide proof of all required insurance within three business days of conditional notice of award.

4. SUBMISSION OF RESPONSE

4.1 Response Submissions

Responses shall be submitted via COMMBUYS.

Technical and Price Responses are to be submitted as separate files and not to be co-mingled.

a) Technical Response including:

- Signed, Enclosure 1 - Bid Cover Letter
- Power of Attorney (as described in Section 4.2 of this RFP)
- Form A: Pre-Award Bidder Evaluation Data Form
- Form B: Technical Response – Bidder provided
- Form C: Small Business Program Attestation Form
- Proof of Insurance



b) Price Response as a separate document, including:

- Form D: Price Response – Excel attachment

The attachment is provided as an example for pricing. The Bidder can use this template or provide another format for pricing.

The above submission requirements are also listed in Enclosure Letter 1 – Bid Cover Letter, in this RFP document.

If a Bidder is a team, whether or not legally formed, the Bid Cover Letter shall be signed by all parties to the Bidder so that the Response is legally binding upon each member of the Bidder.

Any interlineations, erasures or overwriting in the Response will only be valid if they are initialed by the Authorized Signatories.

Bidders shall submit Responses including all forms and schedules and shall not remove pages from the provided forms. **The Technical Response and Price Response shall be completely separate documents.**

Any Response which materially fails to meet the Response requirements of the RFP will be found non-responsive without further evaluation unless the evaluation team, at its discretion, determines that the non-compliance is insubstantial and can be corrected. In these cases, the evaluation team may allow the Bidder to make minor corrections to the Response.

4.2 Power of Attorney

Bidder shall enclose a power of attorney in its own form, duly signed by a legally authorized officer of the Bidder authorizing the Authorized Signatories to sign the Response and bind the Bidder to the Response.

4.3 Acceptance of Response

The Response constitutes a binding offer by the Bidder to enter into the Contract, and the MBTA shall have the right to accept or reject such offer and/or any conditions proposed in full or in part. If the Response is accepted, the Bidder shall conclude the Contract with the MBTA based on the RFP, any addenda, the Response and any agreed amendments or modifications thereto. Until the formal Contract is signed, Bidder has no authority to proceed with the Scope of Work or to incur any costs for which MBTA may be held liable. The MBTA shall have no obligations to Bidder until a formal contract has been entered into.

4.4 Incomplete Response

If Bidder does not fully comply with this RFP, or if the Response is incomplete or vague, the Response may not be considered, unless the MBTA in its absolute discretion decides otherwise.

5. MBTA POLICIES

5.1 Small, Minority, Women, and Other Disadvantaged Businesses

It is the policy of the Commonwealth and the MBTA to ensure non-discrimination in the Procurement of goods and services by continually modernizing systems and processes to include diversity criteria within



state-funded RFPs greater than \$250k. All awarded prime vendors that commit to partnerships with diverse subcontractors will be responsible for submitting a Supplier Diversity Affidavit detailing any spend with subcontractors monthly. Direct spend with subcontractors will be prioritized over indirect spend.

The MBTA is dedicated to promoting more equitable opportunities in state contracting, and to that end, encourages full participation of the Commonwealth's Supplier Diversity Office's recognized certifications, which include small business, Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs), Veterans Business Enterprises (VBEs), Service-Disabled Veteran Business Enterprises (SDVOBEs), Disability-Owned Business Enterprises (DOBEs), and Lesbian, Gay, Bisexual, and Transgender Business Enterprises (LGBTBEs) and Disadvantaged Business Enterprises (DBEs). The MBTA also acknowledges certifications by third-party certifying organizations including the Greater New England Minority Supplier Development Council (GNEMSDC), Center for Women & Enterprise (CWE) (New England - WBENC), City of Boston, VetBiz/U.S. Department of Veterans Affairs, NGLCC - National LGBT Chamber of Commerce, Disability: IN (formerly The US Business Leadership Network-USBLN). More on how to certify through the Supplier Diversity Office can be found here: <https://www.mass.gov/certification-program-for-sdo>.

6. SELECTION PROCESS AND EVALUATION

6.1 Response Opening and Confidentiality

Subject to applicable law, prior to Contract execution, the MBTA intends to treat all information received from each Bidder as confidential information to be used for the purpose of evaluating the Response.

6.2 Responsiveness Review and Basis of Award

The MBTA reserves the right, in its sole discretion, to determine if a Bid is responsive and the Bidder is responsible. In determining whether a Bidder has the ability to perform successfully under the terms and conditions of the proposed procurement, the MBTA will consider such matters as the Bidder's integrity, compliance with public policy (e.g., EEO record, attainment of DBE goal, debarment status, etc.), record of past performance, and financial and technical resources. Bidder is required to complete **Form A: Pre-Award Bidder Evaluation Data Form**.

Upon receipt, the Technical Responses will be reviewed for responsiveness to the RFP requirements. The Technical Responses will be reviewed for (i) deficiencies and minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Response; (ii) conformance to the RFP instructions regarding organization and format; and (iii) the responsiveness of the Bidder to the requirements set forth in this RFP. The MBTA may request Bidder clarification of any minor informalities, irregularities, and apparent clerical mistakes, after which the MBTA may evaluate the Response, at the MBTA's sole discretion.

Those Technical Responses not responsive to this RFP may at the MBTA's sole discretion be excluded from further consideration and the Bidder will be so advised.

After completion of the evaluation of the remaining Technical Responses, the remaining Price Responses will be reviewed for responsiveness to the RFP requirements. The Price Responses will be reviewed for (i) deficiencies and minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Response; (ii) conformance to the RFP instructions regarding organization and format; and (iii) the responsiveness of the Bidder to the requirements set forth in this RFP. The MBTA



may request Bidder clarification of any minor informalities, irregularities, and apparent clerical mistakes after which the MBTA may evaluate the Response, at the MBTA's sole discretion.

Those Price Responses not responsive to this RFP may at the MBTA's sole discretion be excluded from further consideration and the Bidder will be so advised.

The MBTA may also exclude from consideration any Bidder whose Response contains a material misrepresentation.

6.3 Evaluation and Notification

The MBTA will evaluate each Response and seek clarifications as necessary through requests for clarification or in meetings to be arranged at MBTA discretion. The MBTA will evaluate Responses based on a combination of **Pass/Fail Criteria, Technical Evaluation Criteria, and Price Responses**. The process may, at the MBTA's sole discretion, include (i) requests for additional written information or clarification from any Bidder; (ii) requests for oral interviews; (iii) requests for best and final offers ("BAFOs"); and/or (iv) a negotiations phase.

6.4 Pass/Fail Evaluation

The Proposal will 1st be evaluated based on the Pass/Fail Evaluation Criteria identified below. Each Bidder must obtain a "pass" on each Pass/Fail Evaluation Criteria in order for its Response to be eligible for selection. The MBTA may request Bidder clarification on a Pass/Fail Evaluation Criteria, after which MBTA may re-evaluate the Response, at MBTA's sole discretion.

Criteria	Evaluation Methodology	Evaluation Basis
Scale: Active Servicing a minimum 50K plan participants	Pass/Fail	Form A response
Experience with minimum 10 government agencies similar to this SOW	Pass/Fail	Form A response

6.5 Technical Response and Supplier Diversity Evaluation Criteria

Each criterion will be evaluated considering all of the information included in the Technical Proposal related to the criterion, as well as other information gathered from references, presentations, and on-site visits.

In addition to the Technical Response and Evaluation Criteria below, responses will also be evaluated based on the Supplier Diversity Criteria which, will account for 25% of the overall technical scoring. **The MBTA seeks Proposals that incorporate participation by M/WBE's, minority individuals, and women in as many aspects of the services as possible.** MBTA's goal is to select a Contractor who uses creativity to incorporate participation in this contract and is committed to an exceptional and comprehensive program for achieving the diversity and inclusion goals of this RFP as further described.

The MBTA may at its own expense and upon reasonable notice, visit and inspect current operations of the Bidder and/or any proposed subcontractors, including the premises, facilities, equipment, personnel and other resources, and carry out related appraisals as part of the Response evaluation prior to entering into



any Contract.

The Technical Evaluation Criteria are identified and detailed below.

Technical Response Evaluation Criteria
Bidder Experience, Capabilities, and Qualifications (20% of overall Technical Response scoring)
Proposed Service Team (15% of overall Technical Response scoring)
Participant Education/Engagement Strategy (15% of overall Technical Response scoring)
Technology / Cybersecurity (15% of overall Technical Response scoring)
Transition Plan (10% of overall Technical Response scoring)
Supplier Diversity (25% of overall Technical Response scoring)

The Technical Evaluation Criteria and the Supplier Diversity Criteria will be rated using a numerical rating approach. This will be based on the following scoring scale.

- a) **Excellent (5 Points Awarded):** The Bidder has presented and supported an approach that is considered to significantly exceed stated criteria in a way that is beneficial to the MBTA. This rating indicates a consistently outstanding level of quality, with very little or no risk that this Bidder would fail to meet the requirements of the solicitation. There are no weaknesses.
- b) **Good (4 Points Awarded):** The Bidder has presented and supported an approach that is considered to meet the stated criteria. This rating indicates a generally better than acceptable quality, with little risk that this Bidder would fail to meet the requirements of the solicitation. Weaknesses, if any, are very minor and not material to the Response. Correction of the weaknesses would not be necessary before the Response would be considered further.
- c) **Satisfactory (3 Points Awarded):** The Bidder has presented and supported an approach that is considered to possibly meet the stated criteria. This rating indicates a level of risk to the MBTA. Weaknesses exist but may be corrected through requests for clarification.
- d) **Fair (2 Point Awarded):** The Bidder has presented and supported an approach that fails to meet stated criteria and would pose a clear risk to the MBTA. The issues may be susceptible to correction through major and lengthy discussions. Such a response is considered marginal in terms of the basic content or amount of information provided for evaluation.



- e) **Poor (1 Points Awarded):** The Bidder has presented and supported an approach that indicates significant weaknesses or unacceptable quality or fails to include evidence that it can provide the services requested. The Response fails to meet the stated criteria or lacks essential information. There is no reasonable likelihood of success; weaknesses are so major or extensive that a major revision to the Response would be necessary.

The MBTA reserves the right to advance to Price Response evaluation only the Bidders with the highest Technical Response scores.

6.6 Price Response Evaluation

Price will be evaluated in combination with the Technical Evaluation Criteria and the Supplier Diversity Criteria listed above. While the MBTA seeks to minimize costs, the selection of a winning Proposal will be made on a best-value basis.

6.7 Basis of Award: Best – Value Proposal

Bidder is advised that the MBTA shall not be bound to accept the lowest priced Response or the Response with the highest Technical Response Score. The selection will be made on a best-value basis, evaluating price along with other factors. For purposes of this procurement, all evaluation factors other than price, when combined, may be more important than the lowest price. Therefore, the MBTA may decline to select the lowest-priced, technically acceptable Proposal, if the MBTA determines that another, higher-priced Proposal demonstrates sufficient additional technical merit to justify the additional cost. Similarly, price will be an important factor in differentiating between Proposals of comparable technical merit.

In order to make a selection, the MBTA will determine whether the Responses are responsive and evaluate the Pass/Fail Evaluation Criteria, Technical Evaluation Criteria and the Supplier Diversity Criteria, and assign an overall Technical Proposal Score. After the determination of the Technical Proposal Score, the MBTA will evaluate the Price Responses of the remaining Bidders. If applicable, the MBTA will determine the best value by analyzing whether the perceived benefits of the higher priced Response merit the additional cost.

The MBTA will not select any Bidder that receives a rating of fail on any Pass/Fail Evaluation Criteria or less than an average combined score of 2 on the Bidder Technical Evaluation Criteria Response. The MBTA will not select any Bidder that the MBTA determines has submitted a non-responsive Technical or Price Response or to have submitted any pricing information that is not reasonable. The MBTA reserves the right to accept or reject, at its sole discretion, any or all Responses in full or in part.

6.8 Successful Bidder

The successful Bidder will be posted in COMMBUYS. If applicable, all unsuccessful Bidders shall immediately return all confidential information to the MBTA.

6.9 MBTA Reserved

In connection with this RFP, the MBTA reserves to itself all rights (which rights shall be exercisable by the MBTA in its sole discretion) available to it under applicable laws, including without limitation, with or without cause and with or without notice, the right to:



- a) Modify the RFP process in its sole discretion to address applicable law and/or the best interests of the MBTA.
- b) Develop the work to be performed under the Contract in any manner that it, in its sole discretion, deems necessary. If the MBTA is unable to negotiate a Contract to its satisfaction with a Bidder, it may negotiate with the Bidder with the next highest ranked proposal, terminate this RFP and pursue other developments or solicitations relating to the work to be performed under the Contract, or exercise such other rights under the provisions of Massachusetts law as it deems appropriate.
- c) Cancel this RFP in whole or in part at any time prior to the execution by the MBTA of a Contract, without incurring any cost, obligations, or liabilities.
- d) Issue a new Request for Proposals after withdrawal of this RFP.
- e) Not select any Bidder or cancel this procurement.
- f) Reject any and all submittals and Responses received at any time.
- g) Modify all dates set or projected in this RFP.
- h) Terminate evaluations of Responses received at any time.
- i) Exclude any potential Bidder from submitting any response to the RFP based on failure to comply with any requirements of those documents.
- j) Suspend and terminate Contract negotiations at any time, elect not to commence Contract negotiations with any responding Bidder, and engage in negotiations with the Bidder with the next highest ranked proposal if negotiations are unsuccessful with the apparent successful Bidder.
- k) Issue addenda, supplements, and modifications to this RFP.
- l) Appoint an Evaluation Team to evaluate Responses, make recommendations to the MBTA and MassDOT Boards of Directors, and seek the assistance of MBTA, MassDOT, and consultant technical experts in Response evaluations.
- m) Require confirmation or clarification of information furnished by a Bidder, require revised or additional information from a Bidder concerning its Response, and require additional information to clarify a Response.
- n) Conduct presentations with Bidders, identify a short-list of Bidders, and conduct on-site visits at Bidder facilities.
- o) Declare a competitive range, conduct discussions, and request Response revisions and best and final offers.
- p) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP.
- q) Add or delete Bidder responsibilities from the information contained in this RFP.
- r) Waive deficiencies in a Response, accept and review a non-conforming Response, or permit clarifications, revisions, or supplements to a Response.
- s) Negotiate with a Bidder without being bound by any provision in its Response or choose to award and/or execute the Contract without negotiations.
- t) Disqualify any Bidder that changes its submittal without MBTA approval.
- u) Disqualify any Bidder under this RFP for violating any rules or requirements of the procurement set forth in this RFP or in any other communication from MBTA.
- v) Delay issuance of notice to proceed after execution of the Contract.



- w) Conduct all or any portion of the Scope of Work itself.
- x) Exercise any other right reserved or afforded to the MBTA under this RFP or available pursuant to applicable law.

This RFP does not commit the MBTA to enter into a Contract or proceed with the procurement described herein. The MBTA assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All of such costs shall be borne solely by each Bidder.

In no event shall the MBTA be bound by, or liable for, any obligations with respect to the work to be performed under the Contract until such time (if at all) as the Contract, in form and substance satisfactory to the MBTA, has been executed and authorized by the MBTA and, then, only to the extent set forth therein.

In submitting a response to the RFP, each Bidder is specifically acknowledging these disclaimers.

6.10 Appeal / Protest Procedures

Bid appeals / protests relative to this procurement will be reviewed and adjudicated in accordance with the MBTA's Appeals / Protest Procedure - Goods & Services. A copy of this procedure is available online at www.mbtacom.com.

7. CONTRACT STRUCTURE

The contract ("Contract") between the MBTA and the winning Bidder shall be formed by the following sections ("Sections") of COMMBUYS # BD- BD-23-1206-40000-40000-91641 and RFP # 154-23 in order of precedence.

1. Any change orders or amendments, the most recent having precedence
2. Memorandum of Contract
3. Standard Contract and Terms & Conditions
4. Scope of Work
5. Insurance Requirements
6. Contractor Proposal
7. Contractor Fee for Service; Pricing & Invoicing



Enclosure 1 – Bid Cover Letter

Massachusetts Bay Transportation Authority
Attention: Procurement and Logistics Department
10 Park Plaza, Suite 2810
Boston, MA 02116

Instructions: Bidders shall complete the Bid Cover Letter below with their company name and completed check boxes to indicate the bid documents that constitute their bid. **The Bid Cover Letter should be included with all bid documents submitted to the MBTA.**

RFP #:	154-23
COMMBUYS Bid #	BD- BD-23-1206-40000-40000-91641
Project Name:	Deferred Compensation Plans Recordkeeping and Administration
Bidder (Company Name):	

The undersigned Bidder having carefully examined and understood the documents included in the Request for Proposals (“RFP”), hereby offers to MBTA the “*Bid*” as contained in the following responses enclosed with this letter:

Forms	Check to Indicate Submitted Bid Documents
Power of Attorney (as described in Section 4.2)	<input type="checkbox"/>
Form A: Pre-Award Bidder Evaluation Form	<input type="checkbox"/>
Form B: Technical Response	<input type="checkbox"/>
Form C: Small Business Attestation Program	<input type="checkbox"/>
Form D: Pricing Response (as a separate document)	<input type="checkbox"/>
Signed Section 8.1 Massachusetts Bay Transportation Authority Standard Terms and Conditions Note: Section 8 Massachusetts Bay Transportation Authority Standard Contract is NOT to be submitted; it is not completed until award	<input type="checkbox"/>
Proof of Insurance	<input type="checkbox"/>



We confirm that our Bid is in exact accordance with the solicitation with no exceptions to, or comments upon, the solicitation documents. We confirm that the submission of our Bid with the signature below makes all certifications as outlined in the solicitation documents. This Bid shall constitute a binding offer open for acceptance by the MBTA.

We confirm that this Bid has been prepared and is compliant with the solicitation instructions and agree to conduct ourselves in accordance with the solicitation. We confirm receipt of all addenda related to this solicitation. We confirm the 180 days Acceptance Period of this Proposal.

The undersigned are authorized to sign on behalf of and to bind _____ (include Bidder's name) to the provisions of this Bid.

Bidder (company name): _____

Authorized Representative Name: _____

(BLOCK LETTERS)

Authorized Representative's Signature: _____

Title: _____

Date: _____



Form A: Pre-Award Bidder Evaluation Data Form

Pre-Award Bidder Evaluation Data			
Name of Firm:			
Federal Identification Number:			
Legal Address:			
Contact Name:			
Telephone Number:			
Email:			
Please select one: <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture			
Date Organized:	[[]]	State Incorporated:	[[]]
Names of Officers or Partners:	[[]]		
Please provide details of any litigation, suits, or court action taken or pending against Bidder below:			
[[]]			
Please provide the following information that demonstrates that the Bidder together with its selected Affiliates and or Subcontractors has the required capabilities to successfully execute the Work. Please submit as attachments the following requested documents:			Check Attachment
Attach, if applicable, a list of all principal subcontractors and the percentage and nature and value of work each will perform on this project. Principal items of work shall include, but not be limited to, those listed in the solicitation.			<input type="checkbox"/>



Please provide answers to the following questions:	Check Answer
Do you have any outstanding indebtedness or unsecured loans or debts or trading losses?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you have any contracts over the last two years that were assessed liquidated damages or termination for non-performance?	Yes <input type="checkbox"/> No <input type="checkbox"/>

If the Bidder or subcontractor is a joint venture, submit this Pre-Award Bidder Evaluation Data form for each member of the joint venture.



Form B: Technical Response

Section		Page Limit
B1	Bidder Experience, Capabilities, and Qualifications	20
B2	Proposed Service Team	15
B3	Participant Education/Engagement Strategy	15
B4	Technology/Cybersecurity	10
B5	Transition Plan	10
B6	Supplier Diversity	5

Responses that exceed the above page limits may not be reviewed.

B1 – Bidder Experience, Capabilities, and Qualifications

Bidder shall clearly outline their experience and past performance that supports their ability to meet the needs of the MBTA and plan participants, and should be sure to provide details on the components listed below:

1. Firm Background
 - a. How long has your firm administered governmental DC plans? DB plans? Annuity plans?
 - b. What recordkeeping software is utilized, and do you own it?
 - c. Do you partner with another firm to administer DB plans?
 - d. How many governmental DC plans do you administer? How many \$50 million to \$100 million?
 - e. How many governmental DB plans do you administer?
 - f. How many annuity plans do you administer?
 - g. What is your average governmental DC / DB plan asset size?
 - h. What is your median governmental DC / DB plan asset size?
 - i. Knowing you are currently servicing a minimum of 50,000 participants; how many participants are currently on your recordkeeping platform?
 - j. How many new governmental clients were added in the last three (3) years?
 - k. How many governmental clients left in the last three (3) years? What were the primary reasons?
 - l. Detail any recent litigation or enforcement action taken against your firm, including specifics as applicable to retirement plan servicing.
2. Investment platform
 - a. How many unique investment options are offered (exclude multiple share classes of the same strategy)?
 - b. Please describe your notification process to participants when a fund is added or removed from the fund lineup.
3. Administration and Compliance
 - a. How are rollovers into the plan handled?
 - b. What is your small balance force out process? Do you partner with another firm?
 - c. What steps are taken to ensure the accuracy of plan data, transactions, etc.?



- d. Are your processes evaluated by an independent third-party auditor (e.g., SOC 1, SOC 2 reports)? If yes, please detail any issues/concerns identified by the auditor and how mitigated.
 - e. What types of participant, demographics, and usage reports are available for the employer?
 - f. How do you report engagement with Plan participants (e.g., website logins, call center outreach, etc.) to the Plan Sponsor?
 - g. How does your firm help Plan Sponsors establish appropriate processes and fulfill their fiduciary duties?
 - h. Please describe the annual valuation process and your overall approach to actuarial services.
 - i. How does your firm ensure Plan Sponsors are satisfied with servicing provided?
4. Outsourcing
- a. Can the MBTA outsource the distribution of required notices to your firm?
 - b. Can the MBTA outsource enrollments to your firm? Please note digital enrollment capabilities – what, if anything, would be required of the MBTA or the plan design.
 - c. Can the MBTA outsource eligibility determination to your firm?
 - d. Can the MBTA outsource the determination of eligible compensation to your firm?
 - e. Can the MBTA outsource loan approvals to your firm?
 - f. Can the MBTA outsource hardship approvals to your firm?
 - g. Can the MBTA outsource distributions (including DB and Annuity payments) to your firm?
 - h. Can the MBTA outsource beneficiary designations to your firms?
 - i. Can the MBTA outsource rollover approvals to your firm?
 - j. Can the MBTA outsource DRO qualifications to your firm?
 - k. Can the MBTA outsource the calculation of matching contributions to your firm?
 - l. Can the MBTA outsource the calculation of a true-up matching contribution to your firm?
 - m. Can the MBTA outsource the calculation of a non-elective contribution to your firm?
 - n. Can the MBTA outsource benefit calculations to your firm?
 - o. Can the MBTA outsource GASB reporting to your firm?
 - p. Can your firm help locate missing participants?
 - q. Will you put fees at risk based on service standards related to the above outsourcing tasks?
5. Plan Document
- a. Can you administer a custom plan document?

B2 – Proposed Service Team

- 1. A service-oriented Relationship Management team is essential. They should be responsive, easy to work with, and proactive. Please include bios for the primary team members assigned to the MBTA.
- 2. Will the service team meet in person with the MBTA twice a year? If yes, who will attend meetings in person and what will they typically present?
- 3. Would the same service team support the DC, DB, and Annuity plans? Is there a separate DB / Annuity specialist?
- 4. What is your service standard for response times for each team member?



5. Are actuarial, communications, compliance, and education resources assigned to the MBTA in a dedicated or team-based manner?
6. Complete the below for each assigned team member (e.g., Relationship Manager, day-to-day contact, actuarial, communications, compliance, education, etc.).
 - a. Name
 - b. Location
 - c. Number of clients and maximum number of clients
 - d. Average plan asset size of their book of business
 - e. Retention rate of their book of business over the past three (3) years
 - f. Number of years of industry experience
 - g. Number of years at firm
 - h. Relevant professional certifications
 - i. Note experience with comparable clients

B3 – Participant Education/Engagement Strategy

1. Call Center
 - a. What are your service standards? Are they detailed in a Service Level Agreement and subject to fees at risk?
 - b. Where are your call centers located?
 - c. What are the call center hours?
 - d. What was the average hold length and first call resolution percentage in the last year?
 - e. What is the average tenure of your call center representatives?
 - f. Is there a separate call center team for DB / Annuity participants? Do they have any special training?
2. Financial Wellness
 - a. Does your participant website contain videos and/or modules on the following subjects (please note if they are available in multiple languages and via multiple mediums, e.g., in-person or phone)?
 - i. Health Savings Accounts
 - ii. Saving for College
 - iii. Student Loans
 - iv. Emergency Savings
 - v. Budgeting
 - vi. Social Security
 - vii. Medical/Healthcare Costs
 - viii. Debt Management
 - b. Does your firm offer an integrated solution for the following?
 - i. Health Savings Accounts
 - ii. Saving for College
 - iii. Student Loans
 - iv. Emergency Savings
 - c. Please indicate if your firm can offer any of the below to participants:
 - i. Legal services
 - ii. Estate planning
 - iii. Tax preparation
 - iv. Mortgages



- v. Identity protection
 - vi. Financial education for young family members
 - d. Does your participant website and/or mobile app have a Retirement Income Calculator?
 - i. Does it include a Gap Analysis?
 - ii. Does it include a Next Best Step Evaluator?
 - iii. Does it allow for external account aggregation?
 - 1. Can this be updated automatically, or will participants have to update it manually?
 - iv. Does it allow for spousal account aggregation?
 - 1. Can this be updated automatically, or will participants have to update it manually?
 - e. Please detail any additional Financial Wellness resources you think would be impactful for the MBTA employees.
 - f. Were these resources developed in-house or via a third-party partnership?
 - g. What reporting is provided to the MBTA regarding financial wellness (including program engagement) and participant retirement readiness?
- 3. Communications
 - a. What is your firm's approach to participant communications?
 - i. Are communications provided across multiple mediums?
 - ii. Are communications personalized to each participant?
 - iii. How many touchpoints do you expect to provide each participant in a year?
 - iv. How do you ensure you are making a meaningful connection with participants?
 - b. Can communications be customized by the MBTA?
 - c. Can communications be targeted to specific employee populations?
 - i. What support is provided to help the MBTA identify target populations and communications?
 - d. What reporting is provided to the MBTA to assess the effectiveness of participant communications?
 - e. Please provide a couple case studies and sample communications you feel would be impactful with the MBTA's population.
 - f. Will you provide in-person education?
 - i. Will you conduct one-on-one meetings in addition to group meetings?
 - g. How can participants receive one-on-one education from your firm beyond in-person, on-site education?
 - h. Will you provide virtual (webinar) education?
 - i. Can your webinars be recorded?
 - i. Does your firm have brick-and-mortar locations available to plan participants?
- 4. Investment Advice for Participants
 - a. Do you offer point-in-time co-fiduciary investment advice for participants?
 - b. Do you offer managed accounts?
 - c. Do you partner with a third-party to provide this advice?
 - d. Can participants access this advice via phone or in-person?
 - e. Noting in-person, virtual, and call center-based resources, please detail investment education support available beyond point-in-time and managed account resources.



B4 – Technology/Cybersecurity

1. Payroll and Contribution Submission
 - a. Do you have any experience with the Commonwealth of Massachusetts, Office of the Comptroller HRCIS platform?
 - b. Do you have flexibility regarding the format of data provided (file layout)?
 - c. What steps are taken to ensure data security throughout the data exchange process?
 - d. What steps are taken to ensure data integrity with each payroll submission? Are there data checks/edit files?
 - e. What is the process for correcting payroll submission issues?
 - f. Will you notify the MBTA if a payroll/funding feed is not submitted?
 - g. How do you handle loan overpayments?
2. Web Capabilities
 - a. What are the highlights & differentiators of your plan sponsor website?
 - i. Please provide a demo link and login for the plan sponsor website.
 - b. What are the highlights & differentiators of your participant website?
 - i. Please provide a demo link and login for the participant website.
 - ii. Does your participant website have a virtual assistant or chat function?
 1. Is the chat fully A.I. or supported by people?
 - c. What are the highlights & differentiators of your mobile capabilities? Does your mobile app allow for participant transactions?
 - i. Please provide a demo link and login for the mobile app.
 - d. Please detail any forthcoming enhancements to your participant and plan sponsor web/mobile experience.
 - e. For all websites/mobile applications, what are your service standards (e.g., uptime, maintenance, etc.)? Are they detailed in a Service Level Agreement and subject to fees at risk?
3. Cybersecurity
 - a. Please detail your information security standards, practices, policies, and audit results. Please indicate if your firm follows a certain standard or receives audits by a third-party to validate your cybersecurity practices (e.g., SOC 1/SOC 2 Type 2, ISO 27001, etc.).
 - b. How does your firm validate your standards internally? What levels of security standards has your firm implemented? What enhancements does your firm hope to implement in the near future?
 - c. Do clients have the right to review third-party or internal audit results?
 - d. Please detail any substantial cybersecurity breaches your firm has dealt with. How did your firm respond to the breach?
 - e. Do your service agreements with clients commit to ongoing compliance and cybersecurity and information security standards?
 - i. Does your contract require obtainment of a third-party audit to confirm adherence to information security policies and procedures?
 - ii. Does your contract clearly detail your firm's obligation to prevent unauthorized sharing of confidential information?
 - iii. Does your contract require plan sponsor notification of any cyber incident or data breach?



- iv. Does your contract detail your firm's obligation to meet all applicable record retention and privacy loss?
- f. Please detail your cybersecurity and identity theft breach insurance policy coverage.
- g. Do you utilize voice recognition software in your call center as part of fraud risk assessment?
- h. Does your participant website support two-factor authentication?
- i. Do you offer participant education related to cybersecurity best practices?
- j. Do you offer a participant cybersecurity guarantee?

B5 – Transition Plan

- 1. How will you support the MBTA regarding employee communications and education related to the plan?
- 2. Will you customize communications?
- 3. Do participants have access to a transition website or call center representatives prior to the plan going live on your platform?
- 4. Will you support the conversion with on-site employee meetings? Detail any additional costs that may be incurred.
- 5. How will you keep the MBTA up to date regarding conversion progress and will periodic reports be provided on the progress of the work?
- 6. How long is your typical conversion (e.g., 90-days)?
- 7. How many conversions have you completed from ADP in the last three (3) years? How many from Benesys? How many from Buck?

B6 - Supplier Diversity

Bidder shall outline its approach to Supplier Diversity including, at a minimum, the following:

- 1. Provide a specific financial commitment on this contract to be spent with certified Supplier Diversity Program vendors on a Massachusetts fiscal year (July 1st - June 30th) basis.
- 2. What business opportunities have you established with diverse vendors? What partnerships could you leverage with diverse vendors specific to this procurement?
- 3. Submit your company's Supplier Diversity program and/or any information regarding diverse hiring practices and diverse community outreach.



Form C: Small Business Program Attestation Form

To qualify under the MBTA's Small Business Program, the following criteria apply:

- Principal place of business in Massachusetts
- Business operating for at least one year
- Currently employs a combined total of 50 or fewer full-time equivalents in all locations
- Gross annual revenues of \$15 million or less based on a 3-year average

Please select one:

☐ YES, the above criteria apply ☐ NO, the above criteria do not apply

If YES, please complete the fields below. If NO, complete 'Name of Firm' field below only.
Return the form with the bid submission.

Name of Firm:	[]
Federal Identification Number:	[]
Legal Address:	[]
Contact Name:	[]
Telephone Number:	[]
Email:	[]
Please select one: <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture	
Total Number of Full-Time Employees:	[]
Date Organized:	[]
State Incorporated:	[]
Please provide supporting documentation regarding gross annual revenues of \$15 million or less based on a 3-year average (attachments acceptable):	
[]	



Form D: Pricing Response – Excel Attachment

The attachment is provided as an example for pricing. The Bidder can use this template or provide another format for pricing. Please do not submit a PDF. Submit an Excel spreadsheet.

7.1 MBTA Standard Contract Instructions (Section 8.0)

Bidder Do Not sign Section 8 Massachusetts Bay Transportation Authority Standard Contract upon submission of your bid. When the MBTA plans to award contract, the MBTA designated Point of Contact will fill out Section 8.0 Massachusetts Bay Transportation Authority Standard Contract and send it to the successful bidder for signature.

MBTA Standard Terms & Conditions Instructions (Section 8.1)

Bidder Do review and sign Section 8.1 Massachusetts Bay Transportation Authority Standard Terms and Conditions and submit the signed Section 8.1 with their bid for the bid to be responsive and complete.

The MBTA does not encourage attempts to negotiate the Section 8.1 Massachusetts Bay Transportation Authority Standard Contract Terms & Conditions. Many of these provisions are required by law; others are longstanding MBTA policy / practice. Accordingly, Bidders / proposers should only redline or object to provisions that they find absolutely unacceptable. Any rejection or modification of these provisions may disqualify a Bid / proposal as being non-responsive or non-compliant.



8. Massachusetts Bay Transportation Authority Standard Contract

CONTRACTOR LEGAL NAME: (and d/b/a): <input style="width: 80%;" type="text"/>		Massachusetts Bay Transportation Authority (MBTA)	
Legal Address: (W-9, W-4, T&C): <input style="width: 80%;" type="text"/>		10 Park Plaza Boston, MA 02116	
Contract Administrator/Manager: <input style="width: 80%;" type="text"/>		Billing Address: <input style="width: 80%;" type="text"/> invoices@mbta.com	
E-Mail: <input style="width: 80%;" type="text"/>		Contract Administrator/Manager: <input style="width: 80%;" type="text"/>	
Phone: <input style="width: 40%;" type="text"/> Fax: <input style="width: 40%;" type="text"/>		Email: <input style="width: 80%;" type="text"/>	
		Phone: <input style="width: 80%;" type="text"/>	
		RFR/RFP/IFB/Procurement or Other ID Number: 154-23 COMMBUYS # BD- BD-23-1206-40000-40000-91641	
<u>NEW CONTRACT</u>		<u>CONTRACT AMENDMENT</u>	
<u>PROCUREMENT OR EXCEPTION TYPE:</u> (Check one option only) <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input checked="" type="checkbox"/> MBTA Procurement Attach RFR/RFP/IFB and Response or other procurement supporting documentation <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach <u>Employment Status Form</u> , scope, budget) <input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification, scope and budget)		Enter Current Contract End Date <u>Prior</u> to Amendment: <input style="width: 100px;" type="text"/> , 20 <u> </u> . Enter Amendment Amount: \$ <input style="width: 100px;" type="text"/> . (or "no change") <u>AMENDMENT TYPE:</u> (Check one option only. Attach details of Amendment changes.) <input type="checkbox"/> Amendment to Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> Contract Employee (Attach any updates to scope or budget) <input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification and updated scope and budget)	
The MBTA Terms and Conditions (T&C) have been executed, and is incorporated by reference into this Contract.			
<u>COMPENSATION:</u> (Check ONE option): The MBTA certifies that payments for authorized performance accepted in accordance with the terms of this Contract <input type="checkbox"/> Rate Contract (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input type="checkbox"/> Maximum Obligation Contract Enter Total Maximum Obligation for total duration of this Contract (or new Total if Contract is being amended). \$ <input style="width: 100px;" type="text"/> .			
<u>PROMPT PAYMENT DISCOUNTS (PPD):</u> MBTA payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days <input style="width: 20px;" type="text"/> % PPD; Payment issued within 15 days <input style="width: 20px;" type="text"/> % PPD; Payment issued within 20 days <input style="width: 20px;" type="text"/> % PPD; Payment issued within 30 days <input style="width: 20px;" type="text"/> % PPD. If PPD percentages are left blank, identify reason: agree to standard 45 day cycle only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)			
<u>BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT:</u> (Enter the Contract title, purpose, fiscal year(s) and a description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) <input style="width: 80%;" type="text"/>			
<u>ANTICIPATED START DATE:</u> (Complete ONE option only) MBTA and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <input checked="" type="checkbox"/> 1. May be incurred as of the <u>Effective Date</u> (latest signature date below) and no obligations have been incurred prior to the <u>Effective Date</u> . <input type="checkbox"/> 2. May be incurred as of <input style="width: 20px;" type="text"/> , 20 <u> </u> , a date LATER than the <u>Effective Date</u> below and no obligations have been incurred prior to the <u>Effective Date</u> . <input type="checkbox"/> 3. were incurred as of <input style="width: 20px;" type="text"/> , 20 <u> </u> , a date PRIOR to the <u>Effective Date</u> below, and the parties agree that payments for any obligations incurred prior to the <u>Effective Date</u> are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the MBTA from further claims related to these obligations.			
<u>CONTRACT END DATE:</u> Contract performance shall terminate as of <input style="width: 20px;" type="text"/> , 20 <u> </u> , with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
<u>CERTIFICATIONS:</u> Notwithstanding verbal or other representations by the parties, the " Effective Date " of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the MBTA, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached <u>Contractor Certifications</u> (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable MBTA Terms and <u>Conditions</u> , this Standard Contract Form including the <u>Instructions and Contractor Certifications</u> , the Request for Response (RFR), Request for Proposal (RFP), Invitation for Bid (IFB) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR/RFP/IFB and the Contractor's Response only if made using the process outlined in <u>801 CMR 21.07</u> , incorporated herein, provided that any amended RFR/RFP/IFB or Response terms result in best value, lower costs, or a more cost effective Contract.			
<u>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</u> X: <input style="width: 80%;" type="text"/> . Date: <input style="width: 20%;" type="text"/> . (Signature and Date Must Be Handwritten At Time of Signature or utilize an MBTA approved electronic signature) Print Name: <input style="width: 80%;" type="text"/> . Print Title: <input style="width: 80%;" type="text"/> .		<u>AUTHORIZING SIGNATURE FOR THE MBTA:</u> X: <input style="width: 80%;" type="text"/> . Date: <input style="width: 20%;" type="text"/> . (Signature and Date Must Be Handwritten At Time of Signature or utilize an MBTA approved electronic signature) Print Name: <input style="width: 80%;" type="text"/> . Print Title: <input style="width: 80%;" type="text"/> .	



8.1 Standard Terms and Conditions

Upon execution by the Contractor, these Terms and Conditions will be incorporated by reference into any Contract executed by the Contractor and the Massachusetts Bay Transportation Authority (MBTA), in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the MBTA, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The MBTA is entitled to ownership and possession of all deliverables purchased or developed with MBTA funds.

8.1.1 Contract Effective Start Date

Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the MBTA, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

8.1.2 Payments and Compensation

The Contractor shall only be compensated for performance delivered and accepted by the MBTA in accordance with the specific Terms and Conditions of a Contract. Overpayments shall be reimbursed by the Contractor or may be offset by the MBTA from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the MBTA from all claims, liabilities or other obligations relating to the performance of a Contract.

8.1.3 Contractor Payment Mechanism

All Contractors will be paid using the MBTA invoicing system and Contractor will submit its invoice with all supporting documentation as prescribed in a Contract. The MBTA shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable the MBTA to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty.

8.1.4 Contract Termination or Suspension

A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The MBTA may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate MBTA action. Upon immediate notification to the other party, neither the MBTA nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

8.1.5 Written Notice

Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the MBTA or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any



instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

8.1.6 Record-keeping and Retention, Inspection of Records

The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The MBTA shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

8.1.7 Assignment

The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract without the written approval of the MBTA, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the MBTA to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter-claims or any other MBTA rights which are available to the MBTA against the Contractor. The sale of fifty percent (50%) or more of the equity ownership of a Contractor shall be considered an assignment requiring the prior written approval of the MBTA. Impermissible assignments shall be null and void.

8.1.8 Subcontracting By Contractor

Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the MBTA and shall be consistent with and subject to the provisions of these MBTA Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The MBTA is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party. Subcontracts shall note that the MBTA is not a party to the subcontract. Failure to promptly pay a Sub-Contractor for work performed where the Contractor has been paid by the MBTA shall constitute a material breach of the Contract between MBTA and Contractor.

8.1.9 Affirmative Action, Non-Discrimination in Hiring and Employment

The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

8.1.10 Indemnification

The Contractor shall release, defend (at the MBA's option), indemnify and hold harmless the MBTA, its agents, officers and employees (collectively the "indemnified parties") against any and all claims, demands, liabilities, judgments, penalties, costs, expenses (including attorneys' fees and experts' fees), and damages ("Claims") based on or arising out of any actual or alleged loss or injury (including death) to persons or damage to real or tangible property, or patent or copyright infringement, that are caused or alleged to be



caused, in whole or in part, by, or arising out of the acts or omissions of the Contractor, its agents, servants, employees or subcontractors. The MBTA agrees to notify the Contractor in writing within a reasonable period of time of the assertion of any Claim for which the Contractor has agreed to indemnify the MBTA pursuant to this section. The MBTA shall not be liable for any costs incurred by the Contractor arising under this section. If the MBTA incurs any cost or fees for attorneys or experts, or any other costs or expense, to enforce its right to indemnification or defense under this section, the Contractor shall fully reimburse the MBTA for such costs, fees and expense.

8.1.11 Waivers

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor shall it in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

8.1.12 Risk of Loss

The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, MBTA personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the MBTA.

8.1.13 Forum, Choice of Law and Mediation

Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The MBTA and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

8.1.14 Interpretation, Severability, Conflicts with Law, Integration

Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these MBTA Terms and Conditions, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 8.1.1 of these MBTA Terms and Conditions (*Section 8.1*). The printed language of the Standard Contract Form (*Section 8.0*), which incorporates by reference these MBTA Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: any applicable federal provisions, any supplemental provisions, any negotiated terms and conditions allowable pursuant to law or regulation; the printed language of the MBTA Terms and Conditions; the Standard Contract; the MBTA's Request for Response/Proposal/Bid (RFR/RFP/IFB) solicitation document; and the Contractor's Response to the RFR/RFP/IFB solicitation, excluding any language stricken by the MBTA as unacceptable.

8.1.15 Insurance to be Carried by the Contractor

The successful Contractor shall submit proof of insurance for the requirements detailed in the attached **MBTA Minimum Insurance Requirements** enclosure with this solicitation. The attachment will be included with the solicitation posting in COMMBUYS. If in the case they are not available at the time of preparing their Bid, the successful Contractor certifies that they will carry such insurance policies and all costs resulting from this are included in their pricing. The successful Contractor shall provide proof of insurance within three business days of conditional notice of award.



8.1.16 Contractor Certifications and Legal References

The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein.

8.1.16.1 MBTA and Contractor Ownership Rights

The Contractor certifies and agrees that the MBTA is entitled to ownership and possession of all “deliverables” purchased or developed with Contract funds.

8.1.16.2 Qualifications

The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State’s website as licensed to do business in Massachusetts, as required by law.

8.1.16.3 Business Ethics and Fraud, Waste and Abuse Prevention

The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

8.1.16.4 Collusion

The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

8.1.16.5 Public Records and Access

The Contractor shall provide full access to records related to performance and compliance to the MBTA pursuant to G.L. c. 11, s.12 for seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor cannot claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor’s own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under the Massachusetts Public Records Law.

8.1.16.6 Debarment

The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation.

8.1.16.7 Applicable Laws

The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable Massachusetts General Laws; Code of Massachusetts Regulations 801 CMR 21.00 (Procurement of Commodity and Service Procurements); M G.L. c. 66A; and the Massachusetts Constitution Article XVIII if applicable.



8.1.16.8 Tax Law Compliance

The Contractor certifies under the pains and penalties of perjury tax compliance with Federal tax laws; state tax laws including but not limited to G.L. c. 62C, G.L. c. 62C, s. 49A; compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12; TIR 05-11; New Independent Contractor Provisions and applicable TIRs.

8.1.16.9 Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts

The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing **at least 45 days prior** to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is **any risk** to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

8.1.16.10 Federal Anti-Lobbying and Other Federal Requirements

If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including 31 USC 1352; other federal requirements; Executive Order 11246; Air Pollution Act; Federal Water Pollution Control Act and Federal Employment Laws.

8.1.16.11 Protection of Commonwealth Data, Personal Data and Information

The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth/MBTA data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under M.G.L. c. 93H and c. 66A and other applicable state and federal privacy requirements. The Contractor shall comply with M.G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information. The Contractor shall also ensure that any personal data or information transmitted electronically or through a portable device is properly encrypted using (at a minimum) the Commonwealth's "Cryptographic Management Standard" set forth in the Enterprise Information Security Policies and Standards published by the Executive Office for Technology, Services and Security (TSS), or a comparable Standard prescribed by the MBTA. Contractors with access to credit card or banking information of Commonwealth/MBTA customers certify that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards, and shall provide confirmation compliance during the Contract. The Contractor shall immediately notify the MBTA in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the MBTA and provide access to any information necessary for the MBTA to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to G.L. c. 214, s. 3B.

For all Contracts involving the Contractor's access to personal information, as defined in G.L. c. 93H, and personal data, as defined in G.L. c. 66A, or access to MBTA or Commonwealth systems containing such information or data, Contractor certifies under the pains and penalties of perjury that the Contractor (1) has



read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and (2) has reviewed all of the Enterprise Information Security Policies and Standards published by the Executive Office for Technology Services and Security (TSS), or stricter standards prescribed by the MBTA. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all public authorities, executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with any pertinent security guidelines, standards, and policies; (2) comply with all Enterprise Information Security Policies and Standards published by the Executive Office for Security Services and Technology (TSS), or a comparable set of policies and standards ("Information Security Policy") as prescribed by the MBTA; (3) communicate and enforce such security guidelines, standards, policies and the applicable Information Security Policy among all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which the Contractor is given access by the MBTA from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information or personal data (collectively referred to as the "unauthorized use"): (a) immediately notify the MBTA if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the MBTA to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the MBTA and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth and MBTA may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 8.1.10 of MBTA's [Terms and Conditions](#), withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under [G.L. c. 214, § 3B](#) for violations under M.G.L. c. 66A.

8.1.16.12 Corporate and Business Filings and Reports

The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the Secretary of and other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

8.1.16.13 Employer Requirements

Contractors that are employers certify compliance with applicable state and federal employment laws or regulations, including but not limited to [G.L. c. 5, s. 1](#) (Prevailing Wages for Printing and Distribution of Public Documents); [G.L. c. 7, s. 22](#) (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); [minimum wages and prevailing wage programs and payments](#); [unemployment insurance](#) and contributions; [workers' compensation and insurance](#), child labor laws, [AGO fair labor practices](#); [G.L. c. 149](#) (Labor and Industries); [G.L. c. 150A](#) (Labor Relations); [G.L. c. 151](#) and [455 CMR 2.00](#) (Minimum Fair Wages); [G.L. c. 151A](#) (Employment and Training); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); [G.L. c. 152](#) (Workers' Compensation); [G.L. c. 153](#) (Liability for Injuries); [102 CMR 12.00](#) (Dependent Care Assistance Program); [29 USC c. 8](#) (Federal Fair Labor Standards); [29 USC c. 28](#) and the [Federal Family and Medical Leave Act](#) and M.G.L. c. 175M (Family and Medical Leave).

8.1.16.14 Federal And State Laws And Regulations Prohibiting Discrimination

Contractors certify compliance with applicable state and federal anti-discrimination laws including but not limited to the [Federal Equal Employment Opportunity \(EEO\) Laws](#) the [Americans with Disabilities Act](#); [42 U.S.C Sec. 12,101, et seq.](#), the Rehabilitation Act, [29 USC c. 16 s. 794](#); [29 USC c. 16, s. 701](#); [29 USC c. 14, 623](#); the [42 USC c. 45](#); (Federal Fair Housing Act); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L.](#)



c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 92A; G.L. c. 272, s. 98 and 98A, Massachusetts Constitution Article CXIV and G.L. c. 93, s. 103; 47 USC c. 5, sc. II, Part II, s. 255 (Telecommunication Act; Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

8.1.16.15 Right-to-Know Law

The Contractor shall certify that it will comply with the Massachusetts Right-To-Know Law, Chapter 470 of the Acts of 1983. Additionally, the Contractor agrees to submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance, or mixture containing such substance, pursuant to M.G.L. c. 111F §§ 8, 9, and 10, and the regulations contained in 441 CMR § 21.06 when deliveries are made.

8.1.16.16 Small Business Purchasing Program (SBPP)

A Contractor may be eligible to participate in the SBPP, created pursuant to Executive Order 523, if qualified through the SBPP COMMBUYS subscription process at: www.commbuys.com and with acceptance of the terms of the SBPP participation agreement.

8.1.16.17 Other Damages

The term “other damages” shall include, but shall not be limited to, the reasonable costs the MBTA incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. “Other damages” shall not include damages to the MBTA as a result of third party claims, provided, however, that the foregoing in no way limits the MBTA’s right of recovery for personal injury or property damages or patent and copyright infringement under *Section 8.1.10* nor the MBTA’s ability to join the contractor as a third party defendant. Further, the term “other damages” shall not include, and in no event shall the contractor be liable for, damages for the MBTA’s use of contractor provided products or services, loss of MBTA records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the MBTA. In no event shall “other damages” exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. *Section 8.1.10* sets forth the contractor’s entire liability under a Contract. Nothing in this section shall limit the MBTA’s ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference *Section 8.1.10* of the MBTA Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement.

8.1.16.18 Northern Ireland Certification

Pursuant to G.L. c. 7 s. 22C for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

8.1.16.19 Pandemic, Disaster or Emergency Performance

In the event of a serious emergency, pandemic or disaster outside the control of the MBTA, the MBTA may negotiate emergency performance from the Contractor to address the immediate needs of the MBTA even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and



other payment terms.

8.1.16.20 Subcontractor Performance

The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors.

8.1.17 Executive Orders

For covered Executive state Departments, the Contractor certifies compliance with applicable Executive Orders (see also Massachusetts Executive Orders), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

8.1.17.1 Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts

For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

8.1.17.2 Executive Order 130. Anti-Boycott

The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See IRC § 999(b)(3)- (4), and IRS Audit Guidelines Boycotts) or engages in conduct declared to be unlawful by G.L. c. 151E, s. 2. A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the MBTA shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

8.1.17.3 Executive Order 346. Hiring of State Employees By State Contractors

Contractor certifies compliance with both the conflict of interest law G.L. c. 268A specifically s. 5 (f) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the MBTA. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

8.1.17.4 Executive Order 444. Disclosure of Family Relationships with Other State Employees

Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.



8.1.17.5 Executive Orders 523, 526, and 565

Executive Order 523 (Establishing the Massachusetts Small Business Purchasing Program). Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes Executive Order 478). Executive Order 565 (Reaffirming and Expanding the Massachusetts Supplier Diversity Program). All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices. The Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices. The Contractor also commits to purchase supplies and services from certified minority, women, veteran, service-disabled veteran, LGBT or disability-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons; and Contractor commits to comply with any applicable Department contractual requirements pertaining to the employment of persons with disabilities pursuant to M.G.L. c. 7 s. 61(s). These provisions shall be enforced through the contracting Department, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

8.1.17.6 Laws and Regulations Prohibiting Discrimination and Human Trafficking

Contractors acknowledge and certify as a condition of this Contract that they are responsible for complying fully with all state and federal laws prohibiting discrimination, human trafficking, and forced labor, including but not limited to Chapter 178 of the Acts of 2011.

8.1.18 Cyber Security and Operations Requirements

The following cyber security and operations requirements shall apply to Contractor's provision of products and/or services to the Massachusetts Bay Transportation Authority ("MBTA"). Failure to comply with any of these provisions may result in suspension or termination of Contractor's agreement. Any such suspension or termination shall be at the sole discretion of the MBTA. Reinstatement of a suspended contract may require compliance with an MBTA-established corrective action plan. References herein to EOTSS Enterprise Security Policies shall be interpreted to mean such policies as in effect from time to time. The Contractor agrees to meet with the MBTA Information Security Office on a quarterly basis to review ongoing progress and compliance with the requirements specified below.

8.1.18.1 Contractor Security Policy

Contractor shall provide the MBTA with a copy of its Enterprise Security Policy on an annual basis. The MBTA reserves the right to request related security policy documents at any time during the contract term.

8.1.18.2 Process Documentation

Contractor shall maintain current written documentation of the following:

- (i) Incident Management Process:
 - a. As used herein, a computer security incident is a violation or imminent threat of violation of computer security policies, acceptable use policies, or standard security practices.
[Source: NIST Computer Security Incident Handling Guide]



- b. Contractor's documented Incident Management Process must specifically address or refer to a separately documented Cyber Incident Response Process. The Cyber Incident Response process must include prompt notification to the MBTA and incorporate regular communications and information-sharing with key contacts at the MBTA both during and after a cyber incident event. Contractor shall notify the MBTA of any security incident that potentially impacts MBTA data, including but not limited to damage, loss, or breach. Initial notification must be given in the most expedient manner possible, but not later than 24 hours after declaration of a security incident. This includes but is not limited to operational availability. An incident status summary must be provided in writing no later than 24 hours after confirmation of an incident and every twenty-four (24) hours thereafter until incident resolution. During any Cyber Incident Response, Contractor shall provide twice-daily updates to key MBTA personnel and shall make available technical subject matter experts to promptly respond to any MBTA questions. Contractor shall provide a written incident summary to the MBTA no later than one week after resolution of the cyber incident. This summary shall include a plan of action that describes improvements Contractor will make to help prevent a similar incident from occurring in the future. Relaxation of the schedules described in this section may be authorized by the MBTA's CISO.
- (ii) Information Security Risk Management Process,
- (iii) Vulnerability Management Process, and
- (iv) Supplier/Vendor Control Process

(collectively, "Process Documentation"). During the contract term, Contractor shall provide annual updated versions to the MBTA of each element of its Process Documentation.

- a. Contractor shall maintain a Disaster Recovery Plan that describes the procedure for recovering the entire technology solution to be provided by Contractor under the Agreement in the event of a disaster.
- b. Contractor shall conduct a third-party security assessment or penetration test annually and share the report from these engagements with the MBTA within 30 days of the completion of the assessment.
- c. Contractor shall provide an Annual SOC 2 Type 2 report for services provided under the Agreement within 30 days of delivery by the assessor. Contractor must provide a schedule for the planned SOC 2 Type 2 assessment and release the report within 30 days of delivery by the assessor to the contractor. A Bridge Letter will be required for any gaps in the SOC 2 Type 2 assessment period.
- d. Contractor shall have a password policy that requires a minimum of fifteen (15) characters in length. Contractor must use multi-factor authentication for all remote access connections into its network, including, but not limited to VPN, and virtual workspaces where MBTA data is accessed. Contractor shall ensure that regular user accounts of its employees, contractors and/or subcontractors that are used for office suite and web browsing shall not have privileged access to MBTA systems and/or any systems containing MBTA/Commonwealth Data.
- e. Contractor shall have Endpoint Protection software installed and active on all systems. The software must be designed to detect the execution of exploits and behavioral techniques in addition to traditional file scanning.



8.1.18.3 Disaster Recovery Plan

On an annual basis, Contractor must provide the MBTA with relevant Disaster Recovery (“DR”) Plan documentation. The plan must address procedures to restore the systems environment to an operational state. At a minimum the plan must also perform a risk assessment of critical information assets associated with MBTA scope of work, conduct a business impact analysis, develop business continuity plans that address automated processes and document minimum operating requirements to resume critical functions/and sustain full implementation lifecycle operations associated with the delivery and support of the application as provided to the MBTA, in an appropriate period of time. Contractor’s Business Continuity Plan (“BCP”) shall implement adequate business recovery and risk mitigation strategies, including the definition of acceptable recovery time frames. Contractor shall ensure that the ability to recover critical assets will likely exceed the established recovery time and/or recovery point objectives. Contractor’s DR Plan must include not only recovery of critical MBTA information assets, but also providing interim means for performing critical business processes.

8.1.18.4 Security and Regulatory Certifications

Prior to contract execution, Contractor must provide planned dates for obtaining certificates or attestations of all applicable security or regulatory certifications identified below. Contractor’s continued compliance with such security or regulatory certifications is an ongoing and material obligation of this Agreement.

Certificate/Attestation	Required
SOC1	Yes
SOC2 Type 2	Preferred
PCI	No
FedRAMP	No

8.1.18.5 Security Awareness Training

Contractor must ensure that all employees and contractors undergo Security Awareness Training at the time of hiring and regularly thereafter. Contractor must include mandatory participation in periodic social engineering (e.g., phishing) training exercise and maintain records sufficient to demonstrate the completion of such training. Periodic training exercises shall occur on a regular basis.

8.1.18.6 Criminal Background Checks

Contractor shall conduct or cause to be conducted for all current and future employees, contractors and subcontractors performing work that involves access to MBTA systems and/or data under this Contract, a legally available criminal background check, including a Criminal Offender Record Information (CORI) background check with the Massachusetts Criminal History Systems Board for any employees or contractors located in Massachusetts. Upon request, the Contractor shall provide written documentation to the MBTA that demonstrates the Contractor’s compliance with the aforementioned requirements. Furthermore, the Contractor shall conduct these background checks at least once every two (2) years. Any employee of the Contractor’s with a history that includes a felony conviction, any conviction for theft, or who appears otherwise unsuitable to perform the work that is the subject of this Agreement throughout the Term of this Agreement or any extensions thereof, shall not be assigned by the Contractor to perform work under this Agreement.

Contractor shall at all times during the term of the Agreement maintain a code of conduct applicable to individuals that have access to or may have access to Customer's data, systems, or security sensitive



information that requires use of ethical business practices and encourages reporting of suspected fraudulent activities. Contractor shall not knowingly grant access to Customer's data, systems, or security sensitive information to any employee, agent, contractor or subcontractor that has been previously convicted of a felony, any conviction involving theft, or who appears otherwise unsuitable to perform the work that is the subject of this Agreement. If, during term of the Agreement, Contractor becomes aware of any individual having access to Customer's data, systems, or security sensitive information who has been charged, arrested, indicted, incarcerated or convicted of any felony, or crime involving theft, Contractor shall immediately take all reasonable measure to: (1) remove such individual's access to Customer's data, systems and security sensitive information, and (2) inform Customer in the event any activities relating to Customer's account are subject to investigation.

Self-reporting requirements:

For covered employees, contractors and subcontractor personnel, all contractors must have and enforce a self-reporting requirement for all employees, contractors and subcontractors to report any of the below before the start of the next shift of work (except to extent protected by law)

- o Any charge, arrest, indictment, incarceration, or conviction of any criminal offense.

8.1.18.7 Security Requirements for Remote Access

Contractor must use multi-factor authentication for all remote access connections into their network, including, but not limited to VPN, and virtual workspaces containing MBTA data or systems used to support the MBTA.

8.1.18.8 Third Party Security Assessment

Pursuant to EOTSS Vulnerability Management Standard IS0.16: <https://www.mass.gov/doc/is016-vulnerability-management-standard/download>, Section 6.2.1.9, Contractor must conduct internal and third-party network-layer and application-layer penetration testing for each major release at least annually or collect evidence to attest that the third party has a vulnerability assessment performed. Contractor must share resulting assessment reports with the MBTA Information Security Office, at a minimum, on an annual basis. Additionally, Contractor must certify compliance with remediation timelines applicable to the designated severity level established in Section 6.1.4 of the Standard. Failure to comply with such requirements may result in immediate contract suspension or termination, at the sole discretion of the MBTA.

8.1.18.9 Password Security

Pursuant to Section 6.4.1.1 of the EOTSS Access Management Standard, IS.003, Contractor must ensure that all user passwords must be a minimum of fifteen (15) characters. Privileged accounts shall require passwords with a minimum of fifteen (15) characters.

8.1.18.10 Endpoint Protection

Contractor must have Endpoint Protection software installed and active on all systems. The software must be designed to detect the execution of exploits and behavioral techniques in addition to traditional file scanning.

8.1.18.11 Privileged Access

Contractor shall at all times ensure that regular user accounts of its employees, contractors and/or



subcontractors supporting the MBTA will follow appropriate procedures for privileged access including the use of systems that are secured and protected with current anti-virus and anti-malware software. Furthermore, systems that are used for office suite and web browsing shall not have privileged access to any system.

8.1.18.12 Service Level/Operations Disruptions

In the event of a problem that impacts operations, specifically, contractor's ability to meet agreed upon service levels or the security of data associated with the contracted products and/or services, Contractor must conduct meetings with the MBTA to provide status and a forum for questions twice per day until resolution.

8.1.18.13 Information Security Framework Requirements

Contractor agrees to achieve and maintain compliance with the Moderate baseline of the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53 Revision 5 "Security and Privacy Controls for Information Systems" and to provide quarterly updates regarding identified control gaps and mitigation activities.

8.1.18.14 Policy Compliance Requirements

The solution must limit the accessibility of customers' Personal Information and Personally Identifiable Information (PII) and mobility data to different types of users in accordance with M.G. L. chapters 93H, 93I, and 66A, EOTSS Enterprise and MBTA Security Policies.

8.1.18.15 Vendor Risk Assessment Questionnaire and Annual Attestation Requirements

Contractor agrees to complete the MBTA Vendor Risk Assessment (VRA) Questionnaire on an annual basis. The Questionnaire must be signed by an authorized official of the Contractor organization attesting to the completeness and accuracy of the responses provided including any planned mitigation actions.

8.1.19 Supplemental Provisions

8.1.19.1 Applicability

Where applicable, these Supplemental Provisions shall apply to this RFP. In the event of a conflict or disparity between these Supplemental Provisions and Standard Terms & Conditions, the Supplemental Provisions govern.

8.1.19.2 Right-of-Way Safety Requirements

There are no Right-of-Way Safety Requirements for this procurement.

8.1.19.3 Performance Guarantee

There is no Performance Guarantee required for this contract.

8.1.19.4 Liquidated Damages

There are no Liquidated Damages required for this contract.

8.1.19.5 Security Requirements

There are no Security Requirements for this contract.



8.1.20 Terms & Conditions Signature

IN WITNESS WHEREOF, the Contractor certifies under the pains and penalties of perjury that it shall comply with these MBTA Terms and Conditions under Section 8.0 for any applicable Contract executed with the MBTA as certified by their authorized signatory below:

Contractor Authorized Signatory:

Print Name: _____
(BLOCK LETTERS)

Title: _____

Date: _____

(check one) _____ Organization _____ Individual

Full legal Organization or Individual Name:		[]	
Doing Business As Name (If Different):		[]	
Tax Identification Number:		[]	
Address:		[]	
Phone:	[]	Fax:	[]